IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WP(C).No. 22020 of 2006(U)

Against Un-numbered O.S. Of 2006 of the Principal Sub Court, Kollam.

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PETITIONER:

JAYASREE AMMA, D/O.BHAVANI AMMA,
RESIDING AT JAYANIVAS, VALATHUNGAL P.O., KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENTS:

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1. SAILAJADEVI, D/O. BHAVANI AMMA,
RESIDING AT SANTHALAYAM, PADANAYARKULANGARA NORTH,
KARUNAGAPPALLY, KOLLAM.

2. MAHADEVAN, S/O. RAGHAVAN PILLAI,
RESIDING AT SANTHALAYAM, PADANAYARKULANGARA NORTH,
KARUNAGAPPALLY, KOLLAM.

3. MANOJ, S/O. RAGHAVANN PILLAI,
RESIDING AT SANTHALAYAM, PADANAYARKULANGARA NORTH,
KARUNAGAPPALLY, KOLLAM.

4. ABDUL VAHAB, S/O. MUHAMMED KUNJU,
RESIDING AT PUTHEN VEEDU, PULIYOORVANCHI,
VADAKKUMURI, THAZHAVA P.O., THODIYOOR VILLAGE,
KARUNAGAPPALLY TALUK, KOLLAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.Sasidharan Nambiar, J.

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W.P.(C) No.22020 of 2006

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Dated this the 21st day of November, 2006.

JUDGMENT

Petitioner is the plaintiff in an unnumbered suit before the Principal Sub Court, Kollam. Learned Sub Judge directed petitioner-plaintiff to take out a commission to assess the present value of the property so as to fix the market value payable under Section 32 of the Kerala Court Fees and Suits Valuation Act (hereinafter referred to as 'the Act'). This petition is filed under Article 227 of the Constitution of India to set aside Ext.P2 order and to direct Sub Court to take the plaint on file contending that petitioner has assessed the market value under Section 28A of the Stamp Act and the property has been valued as provided under Section 7(3A) of the Act and therefore, the order is to be quashed.

2. Argument of the learned counsel appearing for the petitioner is that the suit is a pre-emption suit and court fee is to be paid as provided under

Section 32 of the Act and the market value has to be assessed as provided under Sub-section (3A) of Section 7 of the Act and therefore, Ext.P2 order is to be quashed.

3. Section 32 of the Act provides that in a suit to enforce a right of pre-emption, fee shall be computed on the amount of the consideration for the sale which the pre-emption seeks to avoid or on the market value, whichever is less. Section 7 of the Act provides how to determine the market value. If the suit does not come either under Sub-section (2) or Sub-section (3), the market value of the property has to be assessed as provided under Sub-section (3A). Under Sub-section (3A), the market value of any property other than agricultural land and building falling under Sub-sections (2) and (3) shall be the value it will fetch on the date of institution of the suit. Therefore, the plaint is to be valued on the value of the property, it will fetch on the date of institution of the suit. In a suit for pre-emption, the petitioner sought cancellation of the document, which shows that the property was transferred for a consideration of

Rs.28 lakhs. In such circumstances, the direction of the court below to take out a commission to assess the value, cannot be said to be illegal, as the petitioner has valued the plaint only at Rs.5 lakhs without giving no data whatsoever. Petitioner is at liberty to file objection to the value submitted by the commissioner and also to prove the value of the property, which would have fetched on the date of institution of the suit, to enable the court to fix the valuation of the property.

Writ Petition is disposed of.

M.Sasidharan Nambiar,
Judge.

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M.Sasidharan Nambiar, J.

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W.P.(C)No.22020 of 2006

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JUDGMENT

21st November, 2006